

**HAGENS BERMAN**

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**Via ECF**

The Honorable Denise L. Cote  
 United States District Court Judge  
 Southern District of New York  
 500 Pearl St., Room 1610  
 New York, NY 10007-1312

Re: *In re: Electronic Books Antitrust Litig.*, No. 11-md-02293 (DLC);  
*The State of Texas v. Penguin Group (USA), Inc.*, No. 12-cv- 3394 (DLC)

Dear Judge Cote:

Class Plaintiffs respond to – and oppose – Apple’s request for an administrative stay, pending the Court’s ruling on Apple’s Motion for a Stay Pending Appeal (“Motion”).

Just as it failed in its Motion, Apple makes no adequate showing that it will suffer irreparable harm if an administrative stay (or any stay whatsoever) is not granted and class notice is disseminated. Indeed, even if the costs of notice were a proper consideration in analyzing irreparable harm (which it is not here), Apple is not paying the costs of notice. The Class and State Plaintiffs are shouldering these costs. Moreover, the notice is an even-handed document that describes the effected consumers’ rights in this litigation. Again, no injury – let alone irreparable injury – can flow from such information.

And as the Class Plaintiffs pointed out yesterday to the Second Circuit in their opposition to Apple’s meritless Rule 23(f) petition, litigation against Apple will proceed regardless of the outcome of Apple’s 23(f) petition to the Second Circuit. As the Court knows, the State Plaintiffs are not subject to Apple’s 23(f) petition.

A stay of class notice will almost assuredly delay the July 14 trial. This is simply another Apple delay maneuver (which the Court rejected previously) – or effort to further balkanize these proceedings.

Respectfully,

**HAGENS BERMAN SOBOL SHAPIRO LLP**

/s/ Steve W. Berman

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